

of a CPA by a borrower has been made, the borrower must notify RUS, in writing, at least 90 days prior to the as of audit date.

(1) RUS will notify the borrower, in writing, within 30 days of the date of receipt of such notice, if the selection or change in CPA is not satisfactory.

(2) Notification to RUS that the same CPA has been selected for succeeding audits of the borrower's financial statements is not required; however, the procedures outlined in this part must be followed for each new CPA selected, even though such CPA may previously have been approved by RUS to audit records of other RUS borrowers. Changes in the name of a CPA firm are considered to be a change in the CPA.

(d) *Audit engagement letter.* The borrower must enter into an audit engagement letter with the CPA that complies with § 1773.6.

(e) *Debarment certification.* The borrower is responsible for the receipt, from the selected CPA, of a lower tier covered transaction certification, as required under the provisions of Executive Orders 12549 and 12689, Debarment and Suspension, and any rules or regulations issued thereunder.

(f) *Submission of auditor's report.* The borrower must submit to RUS the required auditor's report, report on compliance and on internal control over financial reporting, and management letter as set forth in § 1773.21.

(1) An annual auditor's report, report on compliance and on internal control over financial reporting, and management letter that fail to meet the requirements detailed in this part will be returned to the borrower with a written explanation of noncompliance.

(2) The borrower must, within 60 days of the date of the letter detailing the noncompliance, submit corrected reports to RUS.

(3) If corrected reports are not received within 60 days of the date of the letter detailing the noncompliance, RUS may notify the borrower that a default has occurred under its security instrument or take other appropriate action. The default notice will set forth the period of time during which the default will be remedied.

(g) *Submission of plan of corrective action.* The borrower must submit writ-

ten comments to RUS on the findings and recommendations in the auditor's report, report on compliance and on internal control over financial reporting, and management letter. The borrower must also submit to RUS:

(1) A written plan for corrective action taken or planned; and

(2) Comments on the status of corrective action taken on previously reported findings and recommendations.

If corrective action is not necessary, a written statement describing the reason it is not should accompany the auditor's report.

[56 FR 63360, Dec. 3, 1991, as amended at 66 FR 27835, May 21, 2001]

§ 1773.5 Qualifications of CPA.

For purposes of the RUS standard security instrument, any CPA that meets the qualifications criteria of this section and enters into an audit agreement with the borrower that complies with § 1773.6, will be considered satisfactory to RUS.

(a) *Certification.* The accountant that audits the financial statements of an RUS borrower must be a CPA in good standing of some state. The CPA does not have to be licensed by the state in which the borrower is located; however, the CPA must abide by the rules and regulations of professional conduct promulgated by the accountancy board of the state in which the borrower is located.

(b) *Independence.* The CPA must be independent. A CPA will be considered independent if the CPA:

(1) Meets the standards for independence contained in the AICPA Code of Professional Conduct in effect at the time the CPA's independence is under review;

(2) Does not have and has not had any direct financial interest or any material indirect financial interest in the borrower during the period covered by the audit; and

(3) Is not and was not, during the period under audit, connected with the borrower as a promoter, underwriter, trustee, director, officer, or employee.

(c) *Peer review requirement.* The CPA must belong to and participate in a peer review program, and must have undergone a satisfactory peer review of

the accounting and audit practice conducted by an approved peer review program under paragraph (c)(4) of this section, unless a waiver is granted under paragraph (c)(7) of this section. The reviewing organization must not be affiliated with or have had its most recent peer review conducted by the organization currently being reviewed (reciprocal reviews). After the initial peer review has been performed, the CPA must undergo a peer review of the accounting and audit practice within 36 months of the issuance of the previous peer review or at such additional times as designated by the peer review executive committee.

(1) A CPA that receives an unqualified peer review report will be satisfactory to RUS provided that the CPA meets the other criteria set forth in this section.

(2) If a CPA receives a qualified or adverse peer review report, the CPA must undergo a second peer review within 18 months of the date of the qualified or adverse report. A CPA that receives an unqualified second peer review report will be satisfactory to RUS provided that the CPA meets the other criteria set forth in this section.

(3) A CPA that receives a second qualified or adverse peer review report will not be satisfactory to RUS.

(4) *Approved peer review programs.* The following peer review programs are approved by RUS:

(i) The peer review programs conducted by the AICPA;

(ii) The peer review program conducted by the regulated audit program group of the National Conference of CPA Practitioners; and

(iii) An independent peer review program that, in RUS's determination, requires its members to:

(A) Ensure that the CPA can legally engage in the practice of certified public accounting;

(B) Adhere to the quality control standards established by the AICPA;

(C) Submit to peer reviews of the CPA's accounting and audit practice every 36 months or at such additional times as designated by its own executive committee; and

(D) Ensure that all professionals in the firm, including CPAs and nonCPAs, take part in the qualifying continuing

professional education requirements of GAGAS, as set forth in paragraphs (c)(4)(iii)(D)(1) and (c)(4)(iii)(D)(2). A qualified continuing professional education course is one which meets the standards of the AICPA.

(1) An auditor responsible for planning, directing, conducting, or reporting on government audits must complete, every two years, at least eighty hours of continuing education and training which contributes to the auditor's professional proficiency. At least twenty hours must be completed in any one year of the two-year period; and

(2) An individual responsible for planning, directing, and conducting substantial portions of the field work, or reporting on the government audit must complete at least 24 of the 80 hours of continuing education and training in subjects directly related to the government environment and to government auditing. If the audited entity operates in a specific or unique environment, auditors must receive training that is related to that environment.

(5) *Submission of reports.* The CPA must submit to the Assistant Administrator, Program Accounting and Regulatory Analysis, a copy of any peer review report and accompanying letter of comment, if any, within 60 days of the date such report and letter of comment are released by the peer review group.

(i) If the peer review report indicates that a follow-up review will be made, the CPA must submit subsequent reports to the Assistant Administrator, Program Accounting and Regulatory Analysis, within 60 days of the date such reports are released by the peer review group.

(ii) A peer review report must be submitted to the Assistant Administrator, Program Accounting and Regulatory Analysis, at least once every 36 months, or more frequently, if required by the peer review program.

(iii) A copy of the peer review report, accompanying letter of comment, and the partners' inspections must be made available to OIG, upon request.

(6) *Waiver of the peer review requirement.* (i) A CPA may request that the Administrator, RUS, waive the peer review requirement. To be eligible for a

waiver, the following criteria must be met:

(A) The firm has been in existence for less than 1 year from the date of the request and has not been previously organized under a different name;

(B) One of the partners organizing the firm has previously, within 18 months preceding the request, worked for a firm that has been peer reviewed and the partner was partner-in-charge of audits of RUS borrowers in the previous firm;

(C) The firm has enrolled in an approved peer review program; and

(D) The firm agrees to have the peer review conducted within 18 months of the date of the RUS waiver.

(ii) Waiver requests must address each of the criteria in paragraph (c)(7)(i) of this section and should be submitted to the Assistant Administrator, Program Accounting and Regulatory Analysis'.

[56 FR 63360, Dec. 3, 1991, as amended at 61 FR 107, Jan. 3, 1996; 63 FR 38722, July 17, 1998; 66 FR 27835, May 21, 2001]

§ 1773.6 Auditor communication.

(a) During the planning stages of a financial statement audit, GAGAS and AICPA standards require the auditor to communicate certain information regarding the nature and extent of testing and reporting on compliance with laws and regulations and internal control over financial reporting. The communication must include the nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested, and whether the auditors are planning to provide opinions on compliance with laws and regulations and internal control over financial reporting. This communication must take the form of an audit engagement letter prepared by the CPA and formally accepted by the board of directors or an audit committee representing the board of directors. The engagement letter must also encompass those items prescribed in SAS 83, entitled "Establishing an Understanding with the Client". It must also include the following:

(1) The borrower and the CPA acknowledge that the audit is being performed and the auditor's report, report on compliance and on internal control

over financial reporting, and management letter is being issued in order to enable the borrower to comply with the provisions of RUS's security instrument;

(2) The borrower and CPA acknowledge that RUS will consider the borrower to be in violation of its security instrument with RUS if the borrower fails to have an audit performed and documented in compliance with GAGAS and this part;

(3) The CPA represents that he/she meets the requirements under this part to be satisfactory to RUS;

(4) The CPA will perform the audit and will prepare the auditor's report, report on compliance and on internal control over financial reporting, and management letter in accordance with the requirements of this part;

(5) The CPA will document the audit work performed in accordance with GAGAS, the professional standards of the AICPA, and the requirements of this part;

(6) The CPA will make all audit-related documents, including auditor's reports, workpapers, and management letters available to RUS or its representatives (OIG and GAO), upon request, and will permit the photocopying of all audit-related documents; and

(7) The CPA will follow the requirements of reporting fraud and illegal acts as outlined in § 1773.9.

(b) The audit agreement may include such additional terms and conditions as the CPA and borrower deem appropriate, including, but not limited to:

(1) The CPA will report all audit findings to the board of directors as required in § 1773.20(b); and

(2) The auditor's report, report on compliance, report on compliance and on internal controls over financial reporting, and management letter with copies for transmittal to RUS, and supplemental lenders, if applicable, will be submitted to the borrower's board of directors within 90 days of the as of audit date;

(c) A copy of the audit agreement must be available at the borrower's office for inspection by RUS personnel.